

In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best gathered by an auditor. See 86 Ill. Adm. Code 150.201. (This is a GIL).

November 19, 2001

Dear Xxxxx:

This letter is in response to your letter dated October 8, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Your state recently passed NCSL legislation. I am writing to you on behalf of a client of AAA for clarification of the effect, if any, of this NCSL legislation on this client.

This client's main business operations are providing business consulting and management services and licensing the use of several trademarks. This client had three employees visit your state on business in your state during 2000 for durations of 1-5 days each. This client did not maintain a physical presence in your state, nor did it own any tangible property located in your state.

This client operates an Internet Website that offers its logo and various novelty items for sale. These items are shipped into your state via US mail. This client's gross sales shipped to your state that originated through the Internet in 2000 totaled \$1,040.04.

1. Does your state require that this client register to collect and remit sales tax on its Internet sales to your state? If yes, effective as of what date?
2. Do the Internet sales that are shipped into your state create nexus for this client with your state for other taxes, such as income taxes?

This client also produces a magazine that is sold through the mail, from which its logo and novelty items can be purchased by calling a toll-free phone number that is listed in the magazine.

3. If the answer to question #1 on the preceeding page is yes, does this client also have to begin collecting and remitting sales tax on the items that are ordered through its magazine's toll-free phone number and shipped into your state?
4. Does this client have to collect and remit sales tax on the magazine subscriptions that are shipped into your state?

Please advise.

DEPARTMENT'S RESPONSE:

Your letter does not indicate exactly what legislation you are referring to. We are assuming that you are referring to Public Act 92-0221 that is based upon model legislation supported by the National Conference of State Legislatures (NCSL). This legislation has no effect upon any of your clients. Public Act 92-0221 allows the State of Illinois to participate in multi-state discussions regarding a simplified sales and use tax system. This Act also allows, but does not require, the State to enter into an agreement between states to implement such a system. The State of Illinois has not entered into such an agreement.

In the context of a General Information Letter, the Department is unable to make nexus determinations because the amount of information required to make that determination is often best gathered by an auditor. The following information outlines the principles of nexus. We hope it is helpful to you in determining whether you are responsible to pay tax in Illinois. The same analysis applies regardless of whether the sales are made through the use of the Internet, telephone, or catalog/magazine.

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Clause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, 171 Ill.2d 410 (1996).

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers'

Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State.

Please note that Gross receipts from the sale of newspapers and magazines in Illinois are not subject to sales tax. See, 86 Ill. Adm. Code Section 130.2105(a)(2) enclosed for your reference. When determining whether a publication is a newspaper or magazine, a periodicity test must be met and several other factors considered. In order to meet the periodicity test, the publication must be published at least two times or more a year.

Whether the publication has the basic characteristics of a magazine must also be considered. The characteristics considered include containing articles or items of interest to the general public, having the basic format of a magazine such as a soft cover, individual pages and indexed articles, the ability to subscribe to the publication, inclusion of general advertising, and common acceptance of the publication as a magazine. See, Moody's Investors Service, Inc. v. Department of Revenue, 445 N.E.2d 1331 (Ill. App. 1983), *affirmed* 461 N.E.2d 972 (1984).

A literary publication that is published semi-annually and possesses some of these characteristics may qualify for the exemption from Illinois sales tax.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.